

General Information Letter: General definition of resident.

Dear:

This is in response to your letter dated November 10, 1999 in which you state the following:

I spend summers in Chicago and winters in Florida, where I am registered to vote, have my driver's license and own a condominium. I have been renting furnished apartments in Chicago for the summer over the last nine years, since I retired.

I have been told two different times by people at the Chicago state income tax office that under those circumstances I owed no state income tax.

But my situation changed when I bought a condo in Chicago. I took title on Sept. 30. This year I arrived in Chicago on May 5 and was renting until Sept. 30. I expect to return to Florida around November 20. Therefore,

- 1) Do I owe state income taxes from Sept. 30 to November 20?
- 2) Do I owe state income taxes from May 5 to November 20?
- 3) Do I owe no state income taxes in Illinois since I don't work here and my income comes from stocks and money market funds?

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill.Ad.Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois Income Tax Act (IITA), 35 ILCS 5/101 et seq., imposes a tax measured by net income on the privilege of earning or receiving income in or as a resident of this State. According to Section 1501(20) of the IITA, a "resident" is defined as

- (A) an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year;
- (B) the estate of a decedent who at his or her death was domiciled in this State;
- (C) a trust created by a will of a decedent who at his death was domiciled in this State; and
- (D) an irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable. For purpose of this subparagraph, a trust shall be considered irrevocable to the extent

that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code.

In addition, Section 100.3020(f) of the Illinois Administrative Code ("IAC") explains when a "presumption" of residency arises:

- f) Presumption of residence and nonresidence. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.

As you can see, intent is a controlling factor in determining residency. Mere ownership of residential property alone does not create a residence nor does the absence of the property indicate a lack of residence. The process is highly subjective. However, bank accounts, driver licenses and voting privileges in particular help to indicate where one has established a residence. None of these factors are determinate of residency.

The above explanations will hopefully assist you in determining whether you are a full year Illinois resident, part-year Illinois resident or a full year nonresident. This determination is important because the Illinois tax liability will vary depending on your "resident" status. For example, if you are a full year resident of Illinois, all income sources (or deductions) are allocable to Illinois pursuant to IITA Section 301(a). IITA Section 301(b) applies if you are a part-year resident of Illinois. For this situation, all income sources (or deductions) during the time you were a resident of Illinois are allocable to Illinois, and the remainder is allocable pursuant to IITA Sections 302 through 304. According to IITA Section 301(c), Section 302 through 304 also discusses the allocation of income and deductions that apply to full year nonresidents.

Your letter seems to indicate that the income you are concerned with comes from stocks and money market funds. If this is true, IITA Section 303(b)(3) will apply if you are a part-year resident or full year nonresident. Please be advised that even if your income is allocable to the state of Illinois, you may be entitled to modifications (subtractions) pursuant to IITA Section 203(a)(2)(F). For your convenience, enclosed please find copies of the above-mentioned sections of the IITA and IAC.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax